

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY

2019 JUL 12 PM 3: 25

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

WAKE CO., C.S.C.

COMMON CAUSE, *et al.*)

Plaintiffs,)

v.)

Representative DAVID R. LEWIS,)

in his official capacity as Senior)

Chairman of the House Select)

Committee on Redistricting, *et al.*,)

Defendants.)

ORDER ON PLAINTIFFS'
AND LEGISLATIVE
DEFENDANTS' MOTIONS IN
LIMINE REGARDING
ADMISSIBILITY OF
HOFELLER FILES

THIS MATTER comes before the undersigned three-judge panel upon Plaintiffs' Motion in Limine to Admit Certain Files of Dr. Thomas B. Hofeller, and Legislative Defendants' Motion in Limine to Exclude Files and Materials Produced by Stephanie Lizon.

On June 21, 2019, Legislative Defendants filed a motion in limine seeking to exclude from evidence all files produced in response to the subpoena sent by Plaintiffs to Stephanie Hofeller (hereinafter the "Hofeller files"), arguing that Plaintiffs' counsel acquired the Hofeller files through allegedly unethical means, and that Plaintiffs cannot establish chain of custody and authenticity. Legislative Defendants seek, in the alternative, to exclude Plaintiffs' expert rebuttal reports and expert opinion testimony that rely upon the Hofeller files, or, in the final alternative, to continue the trial date to allow the parties another 45 days of expert discovery.

On June 21, 2019, Plaintiffs also filed a corresponding motion in limine seeking to establish the admissibility of a portion of the Hofeller files. Specifically,

Plaintiffs seek to admit only those Hofeller files upon which Plaintiffs' experts have relied in their expert rebuttal reports. Those specific files are attached in Exhibits 1 and 2 of Plaintiffs' Opposition to Legislative Defendants' Motion to Exclude Files and Materials Produced by Stephanie Hofeller, filed on July 1, 2019.

A hearing on the motions was held on July 2, 2019, and the matter was taken under advisement.

After considering the motions in limine and the matters contained therein, as well as the parties' briefs, submissions, and arguments on the motion by those in attendance, and having reviewed the record proper, the Court, in its discretion, grants Plaintiffs' motion and denies Legislative Defendants' motion.

"The requirement of authentication ... as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." N.C.G.S. § 8C-1, Rule 901(a). Testimony of a witness with knowledge that a matter is what it is claimed to be is sufficient to establish authenticity. N.C.G.S. § 8C-1, Rule 901(b)(1). Additionally, if evidence is not susceptible to alteration, a detailed chain of custody need not be established.

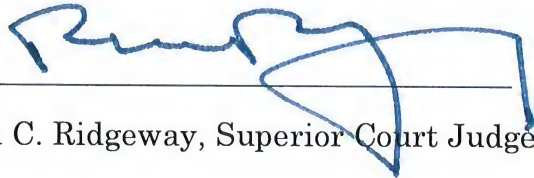
State v. Kistle, 59 N.C. App. 724, 726, 297 S.E.2d 626, 627 (1982).

As to the issues of authentication and chain of custody raised by Legislative Defendants, the Court is satisfied that the evidence provided by Plaintiffs, including the deposition testimony of Stephanie Hofeller, is sufficient to properly authenticate the specific Hofeller files Plaintiffs seek to admit. Additionally, a detailed chain of custody need not be established because there is no evidence any of the Hofeller

files Plaintiffs seek to admit have been altered. Legislative Defendants' concerns regarding the origin and acquisition of the files go to the weight of the evidence and do not preclude admission. The Court finds there are adequate grounds for admitting the specific Hofeller files relied upon by Plaintiffs' experts on the basis of authenticity and chain of custody, provided those files are relevant and not subject to exclusion by other rules of evidence.

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS that Plaintiffs' Motion in Limine is GRANTED and Legislative Defendants' Motion in Limine is DENIED.

SO ORDERED, this the 25 day of July, 2019.

A handwritten signature in blue ink, appearing to read "Paul C. Ridgeway", written over a horizontal line.

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by electronic mail, addressed as follows:

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This the 12th day of July, 2019.



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